IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2006

CORAM :

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Second Appeal No. 274 of 1996
-o-

Kothanramappa .. Appellant/1st Defendant

Versus

1. Thimmaiah
2. Venkatalakshmamma
3. Chinnavaradhamma
4. Pappiah
5. Nagamma
6. Chandramma
7. Chinna Pappamma .. Respondents/Plaintiffs 2 to 4 and Defendants 5 to 7

Second appeal under Section 100 CPC against the decree and judgment 28.07.1995 made in A.S. No. 61 of 1994 on the file of Additional Special Judge, Krishnagiri confirming the decree and judgment dated 10.02.1993 made in O.S. No. 468 of 1979 on the file of District Munsif, Hosur

For Appellant : Mr. M.V. Krishnan

For Respondents : Mr. V. Raghavachari for RR1 to 3, R5, R6 and R7
No representation for R4

JUDGMENT

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The first defendant in O.S. No. 468 of 1979 before the District Munsif Court, Hosur is the appellant in this second appeal. The said suit was filed by the deceased Ramaiah for partition of the suit properties. During the pendency of the suit, the said Ramaiah died and the plaintiffs 2 to 4/respondents 1 to 3 herein were impleaded as his legal heirs.

2. The trial court decreed the suit thereby allotted 8/28 shares in favour of the first plaintiff and directed the first defendant to put the plaintiffs in possession of the suit properties. On appeal, the first appellate Court confirmed the decree and judgment of the trial court and dismissed the first appeal, hence the present second appeal has been filed.

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3. For the sake of convenience, the parties shall hereinafter be referred to as plaintiffs and defendants as they were arrayed before the trial court.

4. The suit properties were originally acquired by Chinnamunusamy through a oral sale from his brother Patha Munusamy. The said Chinnamunusamy died in the year 1975. The first Plaintiff, defendants 1 and 2 are sons, third defendant is the wife and defendants 4 to 6 are the daughters of the said Chinnamunusamy. There are six items of property shown in the schedule of the plaint, among them, the properties shown in item Nos. 1 to 3 and 5 were ancestral properties and item Nos. 4 and 6 were acquired out of the joint family funds for the benefit of the joint family. Though the first plaintiff was the eldest member in the family, he was mentally imbalanced and therefore the first defendant has taken care of the joint family properties. The plaintiffs and defendants were living as a joint family, due to a dispute among the women family members, it was decided to have a separate mess and accordingly the plaintiffs lived in a separate portion of a house and the defendants 1 and 2 lived in the other portion. The first plaintiff sought for partition of the properties, which was refused by the first defendant. A Panchayat took place in the presence of the elders but the first defendant refused to effect partition of the properties. According to the plaintiffs, the first defendant, in order to deprive the legitimate share of the plaintiffs is attempting to defraud them. The first plaintiff is entitled to 8/28 share in the suit property, hence the suit was filed praying for a preliminary decree of partition.

5. The defendants 1 and 2 contested the suit by stating that the suit is not maintainable. The Plaintiffs are fully aware that a partition had already taken place in 1956 and there was a disruption of the joint family status even then. During the life time of Chinnamunusamy, a partition muchalika was entered into on 25.02.1974 by which certain properties were allotted to the first plaintiff and his family. The allegation that item Nos. 1 to 3 and 5 were ancestral properties is false. The defendant never taken care of the management of the properties as alleged. The suit properties are the exclusive properties of the first and second defendants and prayed for dismissal of the suit.

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6. Before the trial Court, the plaintiffs have not marked any documents, but examined the second plaintiff, Ramappa and Seetharamaiah as PWs 1 to 3. On the side of the defendants, Exs. B1 to B3 were marked and first defendant, second defendant, P.R. Krishnamoorthy and Jamvandhan @ Venkatesappa were examined as DWs 1 to 4 respectively.

7. The trial court, after careful consideration of the oral evidence let in by the plaintiffs and the defendants found that though the defendants have stated that even during 1956 a partition was done in which certain properties were allegedly given to the plaintiffs, DW1 in his evidence was unable to say what are the properties allotted to the plaintiffs. Similarly, DW2 in his

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evidence has admitted that he was not aware of the year of the partition and the properties allotted to the plaintiffs. If really a partition had taken place atleast on 25.02.1974 as alleged, the defendants ought to have furnished the details of the properties allotted to the plaintiffs, besides, the averment that item Nos. 4 and 6 of the suit properties were purchased by him out of his own funds was not proved. It is also further pointed out by the trial court that DW4 in his evidence has stated that 5 to 6 years prior to the death of Chinnamunusamy, the suit properties were jointly enjoyed by the plaintiffs and defendants, hence, it held that the properties covered under Ex.B1 dated 28.06.1959, Ex.B2 dated 28.06.1959, Ex.B3 dated 30.12.1969, Ex.B4 dated 10.01.1963 and Ex.B6 dated 17.08.1961 were purchased out of the joint family funds and therefore the first plaintiff is entitled to 8/28 share in the suit properties and accordingly decreed the suit.

8. Aggrieved by the said decree and judgment of the trial court, the appellant herein has filed A.S.N o. 61 of 1994 before the Additional Special Court, Krishnagiri. The first appellate Court after careful consideration of the oral and documentary evidence found that the first plaintiff was mentally ill and therefore the first defendant alone was maintaining the suit properties as a joint family manager; that DW1 in his evidence has admitted that there were ancestral properties belonged to the family of the plaintiff and defendants stood in the name of deceased Chinnamunusamy and therefore the item Nos. 4 and 6 of the suit properties could have been purchased out of the joint family funds for the benefit of the joint family in the name of the first defendant. The first appellate Court also disbelieved the version of the defendants that a partition had already taken place on 25.02.1974 in which certain properties were allotted to the plaintiffs thereby confirmed the decree and judgment of the trial court.

9. The learned counsel appearing for the appellant submitted that the plaintiffs have not proved the existence of joint family; that the partition muchalika dated 25.02.1974 spoken about the oral partition taken place in the year 1956, but the same was not considered by the courts below; that the first plaintiff is a party to Ex.B7, sale deed dated 25.02.1974, hence, he is estopped from questioning it; that Ex.B2, sale deed dated 28.06.1959 has been proved by evidence of DWs 1 and 2 and PW1 is a party to the said document; that the first defendant never acted as a Manager of the alleged joint family; that there was no evidence to show that the deceased first plaintiff was a lunatic, if so, he should have been represented by next friend but it was not done, hence, the suit is not maintainable under Order 33 Rule 15 CPC and prayed for setting aside the decree and judgment of the courts below.

10. Per contra, the learned counsel appearing for the respondents 1 to 3, 5, 6 and 7 submitted that in Ex.B7, sale deed dated 25.02.1974, the signature of Chinnamunusamy was not available, but signature of one Munusamy is found; that the courts below found that the said signature is not the signature of Chinnamunusamy since, no witness was examined by the defendants to prove the same; that the

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courts below found that in Ex.B7, it was alleged that first defendant maintained his father and the second defendant maintained his mother, but in their evidence, the same was not established by them; that the defendants claimed that partition took place in the year 1956, but they are unable to say what are the properties allotted to the plaintiffs; that the evidence of defendants witness is contrary to Ex.B7; that Ex.B10 was a common patta in the name of the deceased first plaintiff and the defendants 1 and 2 which prove the existence of joint family; that there is no evidence to show that second plaintiff was enjoying his share exclusively and considering all those things, the courts below rightly granted the relief sought for by the plaintiffs and prayed for dismissal of the second appeal.

11. The courts below, based on the evidence of plaintiffs and defendants found that Chinnamunusamy died in or about 1975. The courts below relied on the evidence of DW4, who has stated that 5 to 6 years prior to the death of Chinnamunusamy a partition took place between the parties, and found that the averment of the defendants that partition took place in the year 1956 was false. It is also pointed out by the courts below that DW4 is well acquainted with the family of the first defendant and also purchased the property under Ex.B4, sale deed dated 10.01.1963 along with the first defendant, however, his evidence falsify the case of the defendants that partition took place in the year 1956. The courts below also disbelieved the evidence of DW2 considering the material discrepancy in his evidence. It is pointed out by the courts below that the first defendant was examined as DW1, who in his evidence admitted that his father used to sign as Chinnamunusamy but in Ex.B7, the signature was found as Munusamy, hence, Ex.B7 was not a valid one. DW3, who was a scribe of Ex.B7 has stated in his evidence that the original of Ex.B7, sale deed dated 25.02.1974 was with him, but the same was marked before the trial court, hence, the courts below came to the conclusion that Ex.B7 also not proved by the defendants. It is further pointed out by the courts below that the defendants 1 and 2 in their written statement averred that notices were exchanged in the year 1972, but DW1 in his evidence admitted that no notice was sent prior to Ex.B7, partition deed dated 25.02.1974.

12. It is seen from the evidence of defendants witness that they were unable to say what are the properties allotted to the plaintiffs under Ex.B7, sale deed dated 25.02.1974. If really partition took place as alleged under Ex.B7 or in the year 1956, the properties allotted to the plaintiffs could have been mentioned, but nothing mentioned by the defendants either in the written statement or in their evidence. The second plaintiff in his evidence stated that in the year 1970, the first defendant has obtained his father's signature in a blank paper, but the said averment was not denied by the defendants in their evidence. Considering the above said evidence, the courts below came to a conclusion that Ex.B7 could have been cooked up by using the said signature in the blank paper.

13. In so far as the allegation relating to imbalance mind of the deceased first plaintiff is concerned, the courts below came to a conclusion that he was not a lunatic but failed to concentrate in

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family affairs. The said finding of the courts below that the first plaintiff not shown any interest in the family affairs, hence the suit properties were managed by the first defendant is perfectly valid and the argument of the counsel for the appellants in this aspect is rejected.

14. Similarly, the averment that the properties covered under Exs. B1, B2, B3, B4 and B6 were purchased from the income of the ancestral property in the name of the first defendant is concerned, the courts below rightly pointed out that the second defendant, though took defence on the same lines of first defendant, no documentary evidence was produced by him to show that some of the properties were allotted to him, hence, the findings of the courts below that the entire property were managed by the first defendant is valid.

15. In this context, it will be useful to refer the decision of the Honourable Supreme Court reported in (Ramaiah and another vs. Pechi Ammal and others) 1977 (1) TLNJ Page No.7 wherein a Division Bench of this Court held thus:-

> "....If the properties are acquired by a manager of a Hindu joint family and if those properties stand in his name and if such acquisitions are made in the course of his management as manager of the joint family, then the burden shifts on him to establish that such properties are his own and they are not joint family properties. In a case where such acquisitions are questioned, it is not for the challenging co-parcener to establish as already expressed by us; but it is for the challenging manager to show by independent evidence that the acquisitions made by him and in his name are the result of an independent activity of his, totally unconnected with the joint family nucleus or its income. These are well established propositions."

16. In this case, it is alleged by the first defendant that he purchased the suit properties out of his self-earned funds, hence, the onus lies on him to prove, but he failed to prove the same.

17. Even certain cases where a manager of joint Hindu family blends his self-acquired property with the property of the joint family, the effect is that all the properties so blended becomes a joint family property as held in (Rajanikanta Pal and others v. Jagmohan Pal) (1923) 44 MLJ 561 in which the Privy Council held that "where a member of a joint Hindu family blends his self acquired property with the property of joint family, either by bringing his self-acquired property into a joint family account, or by bringing joint family property into his separate account, the effect is that all the property so blended becomes a joint family property." The said decision of the Privy Council was also extracted by the

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Honourable Supreme Court in the decision reported in (Mallesappa Bandeppa Desai and another vs. Desai Mallappa alias Mallesappa and another) 1962 II MLJ 154.

18. In view of the above discussion, this Court is of the considered view that the judgment and decree of the courts below are perfectly valid and interference of this Court is not warranted, besides, there is no question of law, much less substantial question of law involved in this second appeal.

19. In the result, the second appeal is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Additional Special Judge
   Krishnagiri

2. The District Munsif
   District Munsif Court
   Hosur, Krishnagiri District

3. The Record Keeper,
   Vernacular Records Section
   High Court of Madras
   Madras - 600 104

1 cc to Mr.M.V.Krishnan, Advocate, SR.17125

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